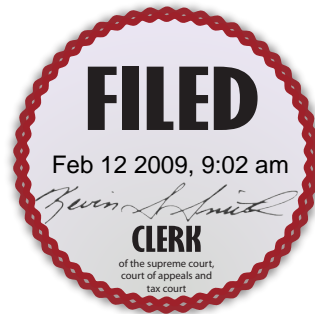


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF N.R., MINOR CHILD, AND HIS MOTHER, )  
NIKI RHODES, AND HIS ALLEGED )  
FATHERS, MICHAEL RHODES, JR., AND )  
DANIEL NEALE, JR., AND ANY UNKNOWN )  
FATHERS,<sup>1</sup> )

NIKI RHODES, )

Appellant/Respondent, )

vs. )

VANDERBURGH COUNTY DEPARTMENT )  
OF CHILD SERVICES, )

Appellee/Petitioner. )

No. 82A01-0806-JV-289

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<sup>1</sup> N.R.'s alleged fathers are not parties to this appeal. Pursuant to Indiana Appellate Rule 17(A), however, a party of record in the trial court is a party on appeal.

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Brett J. Niemeier, Judge  
Cause No. 82D01-0712-JT-00116

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February 12, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Respondent Niki Rhodes (“Mother”) appeals the involuntary termination of her parental rights to her son, N.R. On appeal, Mother claims that there is insufficient evidence supporting the trial court’s judgment. We affirm.

**FACTS AND PROCEDURAL HISTORY**

Mother is the biological mother of N.R., born on December 5, 2006.<sup>2</sup> On March 29, 2007, the Vanderburgh County Department of Child Services (“VCDCS”) investigated a report that Mother was not providing N.R. with proper food, clothing, shelter, and other necessities of life. Upon arriving at the home where Mother and N.R. were residing, the on-call investigating VCDCS caseworker observed beer cans strewn throughout the house, piles of trash, dog feces smeared by the back door, no food in the refrigerator or freezer, and no visible signs of baby formula. Mother informed the caseworker that she was moving to a new residence that day. When the caseworker arrived at the new address later the same day, the caseworker observed then three-month-old N.R. sleeping in a stroller. There was no baby bed in the home, no running water,

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<sup>2</sup> At the time of the termination hearing, paternity of N.R. had not been established. N.R.’s alleged natural father, Daniel Neale, whose parental rights were also terminated by the trial court on May 19, 2008, does not participate in this appeal.

and Mother could not provide any formula for the baby when asked to do so by the caseworker. During this investigation, it was also discovered that local police personnel had made six domestic violence calls to Mother's home in the same month. As a result of the VCDCS's investigation, N.R. was immediately taken into protective custody.

On April 3, 2007, the VCDCS filed a petition alleging N.R. was a child in need of services ("CHINS"). An initial hearing on the CHINS petition was held the following day. Mother appeared and was represented by counsel. During the hearing, Mother admitted to the allegations contained in the CHINS petition. The trial court subsequently found N.R. to be in need of services and ordered that he be made a temporary ward of the State.

A dispositional hearing was held on April 25, 2007. At that time, Mother signed a parental participation plan, which was incorporated into the court's dispositional order. The dispositional order directed Mother to participate in a variety of services designed to improve her ability to care for N.R., including, among other things: (1) to establish and maintain safe, stable and appropriate housing for her and N.R.; (2) to obtain stable income sufficient to sustain both her and N.R.; (3) to cooperate and maintain contact with VCDCS caseworkers and other services providers; (4) to participate in home-based services; and (5) to exercise regular supervised visitation with N.R. as directed by the VCDCS. In exchange for Mother's agreement to successfully complete all ordered services, and in light of N.R.'s tender age, N.R. was returned to Mother's care at the conclusion of the dispositional hearing.

During the time following N.R.'s initial removal and prior to his return to Mother's care on April 25, 2007, Mother began participating in services provided through Ireland Home Based Services ("Ireland"). Vera Williams was the Ireland parent aide first assigned to Mother's case. The goals established by Williams and Mother included finding employment and housing for Mother and helping Mother obtain her GED. Williams also was responsible for supervising visits between Mother and N.R. Initially, Mother consistently exercised her right to visitation with N.R.; however, Mother's participation quickly began to wane, and in April of 2007, she missed four scheduled visits with N.R.

Approximately one month after regaining custody of N.R., he was again removed from Mother's care. This occurred on May 29, 2007, after Mother, who had been evicted from the home where she and N.R. had been residing with N.R.'s maternal grandmother and the grandmother's boyfriend, contacted VCDACS case manager Beth Embry and asked that N.R. be returned to foster care. In response to Mother's request, Embry and Williams immediately made arrangements for Mother and N.R. to live together at a local shelter and to continue to receive services. Despite these accommodations, Mother insisted that she preferred to live on the streets and that N.R. be returned to foster care.

For the next several months, Mother's participation in services and visitation with N.R. continued to be sporadic and included month-long periods of no-contact with Embry and service providers. Various service providers reported that Mother's most frequent excuse for missing scheduled appointments and visits with N.R. was that she had

overslept. Mother also failed to obtain employment and stable housing, either living with family and friends for short periods of time or living on the streets.

On September 26, 2007, during a scheduled supervised visit with N.R., Mother got into a verbal altercation with Williams and began to scream profanities and throw toys that were in the room. She also threw a dirty diaper across the room and began swinging N.R.'s car seat while N.R. was strapped inside the seat. Williams, who feared for N.R.'s safety, gained control of the car seat and child and immediately ended the visit. Mother's visitation privileges with N.R. were briefly suspended as a result of this incident, and Mother was also ordered to participate in anger management classes.

On December 13, 2007, the VCDCS filed a petition seeking the involuntary termination of Mother's parental rights to N.R.<sup>3</sup> A three-day evidentiary hearing on the termination petition commenced on March 24, 2008, was continued the following day, and concluded on March 27, 2008. At the conclusion of the fact-finding hearing, the trial court took the matter under advisement. On May 20, 2008, the court issued its judgment terminating Mother's parental rights to N.R. This appeal ensued.

### **DISCUSSION AND DECISION**

Mother challenges the sufficiency of the evidence supporting the juvenile court's judgment terminating her parental rights to N.R. In so doing, Mother claims the VCDCS failed to establish by clear and convincing evidence (1) that there is a reasonable probability the conditions resulting in N.R.'s removal from her care and custody will not

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<sup>3</sup> An amended termination petition was filed on January 11, 2008, to include N.R.'s newly alleged natural father, Daniel Neale.

be remedied and that continuation of the parent-child relationship poses a threat to N.R.'s well-being and (2) that termination of Mother's parental rights is in N.R.'s best interests.

### **I. Standard of Review**

Initially, we observe that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings in ordering the termination of Mother's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court's unique position to assess the evidence, we will set aside a court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*; *see also Bester*, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2007). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

## **II. Analysis**

Mother challenges the sufficiency of the evidence supporting the trial court’s findings pertaining to subsections (B) and (C) of the termination statute set forth above. With regard to subsection (B), Mother argues that she has made “reasonable efforts to obtain employment and stable housing.” Appellant’s Br. p. 9. She further asserts that the

VCDCS “was markedly unwilling to assist [Mother] with the difficulties homelessness may have imposed upon [her in] exercising her visitation.” *Id.* at 12. Finally, Mother asserts that the VCDCS failed to present any “evidence that [Mother’s] inadequate supervision could not be remedied[,]” and, thus, the trial court’s termination order should be reversed. *Id.* at 13. With regard to subsection (C), Mother argues that the evidence shows that “Mother care(s) about her child[,]” and that Mother “has not only vocalized but has demonstrated her love for [N.R.]” *Id.* at 18. Mother therefore claims that the VCDCS failed to present clear and convincing evidence proving termination of her parental rights is in N.R.’s best interests.

#### **A. Reasonable Probability Conditions Will Not Be Remedied**

At the outset, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. *See L.S.*, 717 N.E.2d at 209. Here, the trial court determined that the VCDCS presented sufficient evidence to satisfy both requirements of subsection (B). Specifically, the trial court found that the VCDCS established there is a reasonable probability the conditions resulting in N.R.’s removal from Mother’s care will not be remedied and that continuation of the parent-child relationship poses a threat to N.R.’s well-being. We begin our review by considering whether sufficient evidence supports the trial court’s former finding.

When determining whether a reasonable probability exists that the conditions justifying a child’s removal or continued placement outside the home will not be

remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county Department of Child Services (here, the VCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there is a reasonable probability the conditions resulting in N.R.'s removal and continued placement outside of Mother's care will not be remedied, the trial court made the following pertinent findings:

14. Following the child's placement in foster care in May of 2007, [Mother] made one (1) of two (2) sessions in June of 2007. She made no scheduled sessions in July due to the fact that [Williams] was unable to locate her and [Mother] did not contact [Williams]. In August of 2007, [Mother] was difficult to locate and continued to miss scheduled appointments, making only one (1) of three (3) appointments. . . . During the month of August, [Mother] also

overslept for a scheduled evaluation with Ireland and Luzio. In September and October, she was not present for any scheduled parent aide sessions with [Williams]. At that time[,] the case was transferred to Kelly Pyle. At the time of transfer, no progress had been made with respect to the goals that [Williams] and [Mother] had identified, in that [Mother] did not have stable employment, permanent housing, had not made any progress toward achieving a GED, and had difficulty obtaining and maintaining necessities for herself and her child.

15. In October of 2007, [Mother] began working with parent aide Kelly Pyle. In October of 2007, [M]other did not attend any of the scheduled parent aide sessions. In November 2007, [M]other made five (5) of seven (7) scheduled appointments. During that month, the parent aide took [M]other to Lampion Center to set up anger management classes pursuant to a court order. . . . In December 2007, the case was put on hold due to [Mother's] lack of participation with visitation.
16. In February 2008, [Mother] attended three (3) out of seven (7) sessions. During that month, on one occasion, [M]other reported that she would not leave [her home] to put in [job] applications because she was waiting for her aunt to bring her cigarettes and minutes for her cellular phone. Mother attended no scheduled sessions in the month of March, 2008. . . . As of the time of trial, [M]other had not secured employment or any other source of income. Although [M]other had no stable housing, this was mostly due to her lack of initiative in obtaining housing for herself; others in her position have benefited from the provision of services, and have been able to obtain housing and employment on their own or with assistance even when they initially were homeless.
17. [Mother] lived at a number of locations during the pending CHINS matter. . . . [Mother] lived on the streets and also stayed with friends from time to time. As of the time of trial, [Mother] had been living with friends of her aunt for approximately two months. Mother was informed that any persons that would come into contact with her child would need to have background checks completed and be approved by the [VCDCS]. Mother never reported the names of the persons in the home to the family case manager for approval. In addition, [M]other did not report the address as an address that she intended to live at, so the condition of the home could not be assessed. Mother's failure to ensure that her living arrangements are appropriate for [N.R.] indicates a lack of interest in having her child in her care. Mother made application to a shelter after the first day of her termination of parental rights trial. At no time during the

pending CHINS matter did [M]other secure safe, stable, permanent housing for herself and her child.

18. Beginning in May 2007, [Mother] received visitation with [N.R.] which was supervised . . . . In June, [Mother] made one (1) out of seven (7) scheduled visits[.] [I]n July, she attended seven (7) of eleven (11) scheduled visits. In August she made eight (8) out of fifteen (15) visits. In September, [Mother] was present for eight (8) out of nine (9) visits, but had to be warned that visits would be ended early pursuant to visitation rules when she would fall asleep during the scheduled visit. During these months, [Mother] cancelled several visits due to the fact that she reported not having the necessary food and diapers for [N.R.]. Mother had been informed of available resources for these items. When [M]other did bring these items, she often reported that they had been provided to her by her aunt. Mother also cancelled visits due to oversleeping.

19. On September 26<sup>th</sup>, 200[7], [Mother] again fell asleep and was told that the visit would be ending early. Upon being told[.]. . . [Mother] proceeded to verbally assault the visitation supervisor, calling her a “f\*\*\*\*\* b\*\*\*\*\*” and a “f\*\*\*\*\* fat n\*\*\*\*\*[.]” [Mother] began to throw toys . . . and also threw one of the child’s dirty diapers, stating that she was not picking up this “fucking shit[.]” . . . She became highly animated and continued to scream, swinging the car seat with the child still inside. At that point, . . . Williams feared for the safety of the child and gained control of the child from [Mother]. . . . [Mother’s] visitation with [N.R.] was briefly suspended due to this incident, but was reinstated by the Court on October 10, 2007. When visitation was reinstated, the case was transferred to a new visitation supervisor, Kelly Pyle.

\* \* \*

23. As a result of the previous history of reported domestic violence and the incident that occurred during the supervised visit on September 26, 2007, [Mother] was ordered by the [C]ourt to complete anger management courses. Anger management classes were set up for [Mother] at Lampion Center. . . . [Mother] did appear for an intake appointment in November of 2007, and attended five (5) out of twenty-three (23) classes. However, she was released from the program due to excessive absences. . . . Due to [M]other’s continued non-compliance with services and failure to appropriately address her anger control problems, [M]other’s visitation remained suspended after December 5, 2007.

\* \* \*

25. A psychological evaluation was completed . . . . At that time[,] [Mother’s] financial difficulty providing diapers and formula were

discussed in relation to [M]other's smoking habit[.] [M]other reasoned that she had an easier time getting \$2.50 for a pack of cigarettes than \$7 for a can of formula. The results of the evaluation indicated that [Mother] did not appear to feel a sense of emotional closeness to [N.R.]. The evaluation also recommended continued assistance from a parent aide, which [M]other failed to comply with.

\* \* \*

28. [Mother] has no plan in place for how to be independently capable of caring for [N.R.] in her aunt's absence, and has not demonstrated a willingness to provide for [N.R.] herself.

\* \* \*

30. [Mother] has not shown an ability to provide for herself and her child in a reasonable manner. She depends on others for housing and financial assistance despite reporting no physical or mental obstacles to being able to achieve these things for herself. She obtains money from her friends and her aunt, but uses that money to purchase items for herself rather than use the money to secure housing or necessities that would help her achieve reunification with her son. She has also failed to take advantage of other services that are available to her free or at a low cost, such as housing at local shelters or necessities for her child at the local food banks, despite being informed how to access those services and being informed that accessing those services will help her demonstrate a willingness to provide for her child. [Mother] did not wish to stay at Ozanam Family Shelter, where she could have lived with her child, due to the fact that they require residents to do chores. [Mother] does not have a plan for how she will provide for [N.R.] in the future. [Mother] obtains what she needs to survive for herself from others on a daily basis without planning ahead or considering what the needs of herself and her child will be in the future.

\* \* \*

35. [Mother] has had more than ten months in which to remedy the reasons for removal of [N.R.] from her care. [Mother's] continued non-compliance with Court orders at the time of trial indicates that she is unlikely to remedy the reasons for continued removal of the child from her care.

Appellant's App. pp. 16-24. The evidence most favorable to the judgment supports these findings, which in turn support the trial court's ultimate decision to terminate Mother's parental rights to N.R.

N.R. was initially removed from Mother's care in April 2007 due to Mother's inability to provide him with proper food, shelter, and other life necessities, and also due to the fact that several instances of domestic violence had recently occurred in the family home in N.R.'s presence. N.R.'s continued placement outside of Mother's care was the result of Mother's failure to resolve these issues and to successfully complete court-ordered services. At the time of the termination hearing, Mother was still unable to provide N.R. with the minimal necessities of life, such as food, shelter, and a safe and nurturing home environment. Moreover, at the time of the termination hearing, Mother had failed to successfully accomplish a single dispositional goal set during the CHINS case.

Significantly, the record reveals that in May of 2007, Mother, who was homeless at the time, was presented with an opportunity to live in a family shelter with N.R. while continuing to receive home-based services, including assistance with securing employment. Mother refused this offer of help, however, and opted instead to return N.R. to foster care and to "live on the streets." Tr. at 146. Mother's housing instability persisted throughout the duration of the CHINS and termination proceedings while she bounced between living with relatives and friends and being homeless. At the time of the termination hearing, Mother still had not obtained stable housing but was living in a one-bedroom apartment with two of her aunt's friends, where she slept on the sofa every night. Also significant, Mother never obtained employment since the initiation of the underlying CHINS proceedings and remained unemployed on the date of the termination hearing. In addition, Mother failed to participate in individual counseling and her refusal

to consistently attend the court-ordered anger management program resulted in her being discharged from the program due to excessive absences. Finally, the record reveals that Mother's participation in supervised visitation was sporadic at best, included months where no visitation occurred at all, and on one occasion, had to be ended early due to Mother's angry outburst and physical violence. Moreover, at the time of the termination hearing, Mother had not been permitted to visit with N.R. for several months due to her failure to comply with court-ordered services and visitation rules.

“A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In addition, the failure to exercise the right to visit one's child demonstrates a “lack of commitment to complete the actions necessary to preserve the parent-child relationship. *Id.* Based on the foregoing, we conclude that the trial court's findings are supported by ample evidence. These findings, in turn, support the court's conclusion that there is a reasonable probability the conditions resulting in N.R.'s removal from Mother's care will not be remedied. As previously explained, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Thus, the trial court had the responsibility to judge Mother's credibility and weigh her testimony of changed conditions against the evidence demonstrating Mother's habitual

pattern of conduct in failing to obtain stable housing and employment, and in failing to provide a consistently safe and nurturing home environment for N.R. It is clear from the language of the judgment that the trial court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to the termination hearing than to mother's testimony that she had changed her life to better accommodate the children's needs). Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264; *see also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).<sup>4</sup>

## **B. Best Interests**

We next turn our attention to Mother's allegation that the VCDACS failed to provide sufficient evidence to establish that termination of her parental rights is in N.R.'s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of*

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<sup>4</sup> Having concluded the trial court's determination that there is a reasonable probability the conditions resulting in N.R.'s removal from Mother's care will not be remedied is supported by sufficient evidence, we need not address Mother's arguments regarding the sufficiency of the evidence supporting the trial court's determination that continuation of the parent-child relationship poses a threat to N.R.'s well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

*Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In its judgment terminating Mother's parental rights to N.R., the trial court found N.R. to be thriving in his pre-adoptive foster care placement and to have bonded with his foster parents. The trial court's judgment further indicated that N.R., who is a special-needs child with a serious physical condition similar to cerebral palsy, requires weekly physical therapy without which N.R. will experience a tightening of his muscles that will cause him difficulty in functioning in many areas of his life. The court also found that without consistent therapy for many years to come, N.R. will likely suffer profound effects on his legs, hips, and eventually his lungs and other internal organs and that Mother's instability and history of failure to follow through with court orders indicates she would not be able to provide the consistent care required for a special needs child such as N.R. Moreover, in addition to the findings set forth previously, the trial court made several additional pertinent findings in deciding that termination of Mother's parental rights is in N.R.'s best interests as follows:

24. An assessment to observe the bond between [Mother] and [N.R.] was performed by Dr. Rebecca Luzio . . . . Dr. Luzio observed that [Mother] attributed negative characteristics to the [N.R.], and labeled the child as having a temper. Dr. Luzio was also particularly concerned with [Mother's] difficulty attuning herself to the child and her tendency toward becoming frustrated in such a short time frame. While other parenting skills may be learned, failure to nurture the child and provide them with appropriate attention is a more significant concern due to the fact that these particular characteristics are not easily remedied.

\* \* \*

33. The CASA volunteer's recommendation for the best interests of [N.R.] is termination of [Mother's] parental rights. This recommendation was based on the child being endangered by his mother's choices in the following ways:
- a. [Mother] has no stable plans for her future nor for her son's care if reunified.
  - b. [Mother] has not consistently taken advantage of services such as parent aide and visitation with her child.
  - c. Mother did not complete anger management classes . . . .
  - d. Mother is not employed and has no means of financial support.
  - e. Mother cannot provide a stable and safe environment for [N.R.] as demonstrated by continued irresponsibility.
  - f. In January 2008, Mother requested, and was granted, additional time to receive services in an attempt to achieve reunification. The expectation was that [M]other would take advantage of this time to make necessary changes. [Mother] did not take action to improve or change her situation.
  - g. [N.R.] should be afforded the advantages of a loving and supporting home.

Appellant's App. pp. 20, 24. The evidence supports these findings.

Court Appointed Special Advocate ("CASA") Nancy Ubelhor spoke with a variety of persons involved in Mother's case, including case manager Embry, parent aide/visitation supervisor Pyle, Mother's aunt, N.R.'s therapist and foster parents, as well as Mother, in an attempt to determine what course of action would best serve N.R.'s

interests. In testifying as to how she arrived at her decision to recommend the termination of Mother's parental rights as being in N.R.'s best interests, Ubelhor explained:

I expected when I got this [case] that we were really gonna see this mother, uh, move. . . . [T]his was . . . her last chance for reunification and that she was just going to really do all the things that were expected in a timely manner. . . . [T]hat didn't happen. . . . She not only did not have a plan for herself, she didn't have a plan for [N.R.'s] return. . . . [N.R.] has some developmental problems, he's going to need . . . according to his therapist, a weekly . . . therapy session for years to come. . . . [T]hat's, you know, pretty outstanding that she's not able to establish responsibility for herself and therefore not for him and [to] meet the needs that he's going to have . . . to develop the way that he needs to. . . . [N.R.'s] come a long way and he, uh, deserves to go the rest of the way to be a normal healthy child.

Tr. pp. 95-6. Similarly, Embry also recommended the termination of Mother's parental rights. In so doing, Embry informed the trial court that Mother's case had "not progressed in any way that it should within the past year." *Id.* at 180. Embry went on to testify that N.R. was "doing very well in his foster placement[.]" that he was receiving all of the attention and services that he needs with regard to his developmental delays, and that N.R. had "made much progress" while in the care of his foster family. *Id.* When asked what she would have expected to see from Mother in order to recommend reunification, Embry replied:

I would've expected [Mother] to comply with the services offered to her. I would have expected her to keep all of her appointments with the parent aide, with the visitation. I would've expected . . . the visitations to move from supervised to monitored [and] eventually to overnights, as the natural progression is. Um, I would've expected employment[.] I would've expected anger management to be completed, um, just more of a willingness to get her son back and to cooperate with the Department.

*Id.* at 180-81.

Based on the totality of the evidence, including Mother's continuing homelessness and unemployment, as well as her failure to complete or benefit from any of the services available to her throughout the duration of the CHINS proceedings, coupled with the testimony from both Ubelhor and Embry recommending termination of Mother's parental rights, we conclude that there is sufficient evidence to support the trial court's conclusion that termination of Mother's parental rights is in N.R.'s best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

### **III. Conclusion**

A thorough review of the record leaves this court convinced that the trial court's judgment terminating Mother's parental rights to N.R. is supported by clear and convincing evidence. Since the time of N.R.'s removal, Mother has failed to make any improvement in her ability to care for her son. It is unfair to ask N.R. to continue to wait until Mother is willing to obtain, and benefit from, the help that she needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). We will reverse a termination of parental rights "only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made." *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly*, 592 N.E.2d at 1235). We find no such error here.

The judgment of the trial court is hereby affirmed.

FRIEDLANDER, J., and MAY, J., concur.